IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 2464 of 2002

Between:

Smt.A.Urmila W/o.S.Ravi kumar
Tagores Home Junior College, East Maredpally,
Secunderabad-26.

..... PETITIONER

AND

1 State of A.P. Rep.by its Secretary, Education Department,
Secretariat Buildings, Hyderabad.
2 Commissioner and Director of Intermediate Education, A.P.,
Hyderabad.
3 Tagore Home Junior College, Rep.by its Secretary and
Correspondnet, East Maredpally, Secunderabad-26.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction especially one in the nature of Mandamus : i) declare the action of the authorities in not following the procedure prescribed in G.O.Ms.No.12, Edn.(CE-II) Dept. dt.10.1.1992 while making selection to the post of Jr.Lecturer in Civics on 19-12-2001 in the 3rd respondent college as illegal, arbitrary and without jurisdiction; ii) direct the respondents to consider the case of the petitioner for selection and appointment to the regular aided post of Jr. Lecturer in Civics on the basis of the qualifications and teaching experience and to grant all consequential benefits.

Counsel for the Petitioner:MR.V.JOGAIAH SARMA

Counsel for the Respondents: GP FOR HIGHER EDUCATION

The Court made the following:

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ORDER:

Challenging the action of the respondents in not following the procedure prescribed in G.O.Ms.No.12, Education (CE-II) Department, dated 10-01-1992, while making selection to the post of Junior Lecturer in Civics on
19-12-2001 in the third respondent-college as illegal and arbitrary, the present writ petition is filed.

The brief averments of the allegations of the petitioner are as follows:

The case of the petitioner is that she was appointed
as part time Lecturer in Civics in the third respondent-
college in July, 2000. Pursuant to the proceedings in Rc.No.G3/961/2001-52, dated 05-10-2001 of the second respondent, selections of S.C./S.T. backlog aided vacancies have taken place on 19-12-2001 for appointment to the post of Junior Lecturer in Civics in the third respondent-college and 7 applications were filed, out of which, the petitioner is the only candidate having teaching experience. The selection was made basing on the marks obtained in the P.G. Examination. The petitioner states that the respondents, while making selections, should follow G.O.Ms.No.12, Education (CE-II) Department, dated 10-01-1992, in which it is prescribed that 10 marks will be given to teaching experience and if that procedure is followed, she would have been appointed and therefore the selection process is vitiated. Challenging the same, the present writ petition is filed.

In the counter affidavit filed on behalf of the respondents, it is stated that the Government has issued orders for filling up of the backlog vacancies of SC/ST waiving
the written examination and oral tests for the limited
recruitment to be conducted by various recruiting agencies.
In G.O.Ms.No.214, dated 08-05-2001, it is stated that the selection for such limited recruitment of SC/ST be made on the basis of marks obtained in the qualifying academic examinations by waiving written examination and interviews to fill up the backlog vacancies and therefore the petitioner cannot be given preference than the other meritorious candidates.

It is also stated that though in G.O.Ms.No.12, dated
10-01-1992, the procedure of selection of Lecturers/Junior Lecturers in private Degree and Junior Colleges under direct recruitment was envisaged, but in G.O.Ms.No.214, dated
08-05-2001, which is a statutory order, the Government issued in relaxation of the method of selection by written examination and interview, for appointment by direct recruitment for filling up of backlog vacancies for SC/ST vacancies. Therefore, the procedure insofar as awarding of marks for teaching experience and teaching test is not applicable as contended by the petitioner.

It is further stated that out of the 7 candidates Kumari N.Sujatha has got 61.87%, J.Sarada has got 60.37% and J.Naga Ratnam has got 60.12% and the petitioner has got 53.12% in their P.G. examinations and the petitioner stood 6th place. As the first and second selected candidates did not join the duty, the management had appointed the third candidate from the merit list and she joined duty on 13-02-2002 and thereafter resigned on 23-08-2002. In such a case, the post, which has fallen vacant is to be filled only by following the procedure once again as per the fresh Roaster point, but the petitioner who stood at 6th place in the selection cannot claim any right over the vacant post.

In the reply, the petitioner submits that G.O.Ms.No.214, dated 08-05-2001 cannot be applied to take away the merit of the candidates who are otherwise have to be got selected in terms of G.O.Ms.No.12, dated 10-11-1992.

The learned counsel appearing for the petitioner contended that the respondents, while making the selections to the post of Junior Lecturer, has not followed the procedure prescribed under G.O.Ms.No.12 Education (CE-II) Department, dated 10-01-1992, which provides selection procedure, and if that procedure is followed, the petitioner would have been selected and hence he prays to set aside the selections and direct the respondents to consider the case of the petitioner for selection in terms of the said G.O.

On the other hand, the learned Government Pleader for Higher Education appearing for the respondents contended that G.O.Ms.No.12 Education (CE-II) Department, dated
10-01-1992 is an executive order, whereas the selections were made only in terms of G.O.Ms.No.214 General Administration (Ser.A) Department, dated 08-05-2001,

which is a statutory one and having accepted the selection procedure while participating in the interview, the petitioner cannot turn round and say that the procedure in G.O.Ms.No.12, dated
10-01-1992 has to be followed. Hence, she prays to dismiss the writ petition.

The third respondent-college is an aided institution, which is governed by the A.P. Education Act, 1982. The case of the petitioner is that she was appointed as part time Lecturer in Civics in the third respondent-college in July, 2000. In pursuance of the proceedings dated 05-10-2001 issued by the second respondent in filling up of certain backlog vacancies reserved for SCs and STs, 7 candidates were called for interview for selection to the post of Junior lecturer in Civics. Basing on the marks obtained in the qualifying academic examination, ranking was given. Out of the seven candidates, Kumari N.Sujatha got 61.87%, J.Sarada got 60.37% and J.Naga Ratnam got 60.12% in their P.G. Degree, whereas the petitioner, who got 53.12% in her P.G. Degree, stood 6th place. As the first and second selected candidates did not join the duty, the management appointed the third candidate from the merit list who joined duty on 13-02-2002. But the third candidate, Kumari J.Naga Ratnam, resigned her post on 23-08-2002. Thereafter, the present writ petition is filed stating that the procedure in G.O.Ms.No.12, dated
10-01-1992 is to be followed. This G.O. governs the filling up of the posts in the private colleges and the procedure for selection of candidates, which reads as follows:

> "Ranking of candidates shall be done on the basis of marks secured in the following from out 100 marks.
>
> i) Weightage of marks for academic
>
> record of the candidate --- 50 marks
>
> ACADEMIC RECORD MEANS:
>
> a. For Marks secured in
>
> the P.G. Degree – 40 marks
>
> b. For M.Phil/Ph.D - 5/10 marks
>
> ii) Teaching experience --- 10 marks
>
> (for each completed six months of service)
>
> iii) Teaching Test --- 40 marks

Total: 100 marks

According to the petitioner, if this procedure is followed, she would have teaching experience and further no teaching test has been conducted by the management in making the selection and therefore, the entire procedure for making the selection is void. This G.O. is issued by the Government as executive instructions. In G.O.Ms.No.214, dated 08-05-2001, the Governor of Andhra Pradesh made Adhoc Rule by exercising the powers conferred by proviso to Article 309 of the Constitution of India on 08-05-2001, which reads as follows:

> "Not withstanding anything contained in the Andhra Pradesh State and Sub-ordinate Service Rules, 1996 and Special Rules or Ad-hoc Rules and any other rules governing the method of recruitment procedure adopted by various recruiting agencies for various categories of posts by direct recruitment, the method of selection by written examination and Interview (oral tests) for appointment by direct recruitment for filling up of back-log vacancies for Scheduled Castes and Scheduled Tribes in all categories of posts, be relaxed and that the selection for such limited recruitment of Scheduled Castes and Scheduled Tribes be made on the basis of marks obtained in the qualifying academic examinations by waiving written examination and interviews (oral tests) to fill up the back-log vacancies and the vacancies shall be filled within two months."

So, the above Adhoc Rule, which is a statutory one, gives no room to doubt that for filling up of the vacancies by recruitment agencies to make selections on the basis of marks obtained in the qualifying academic examination. This Rule completely waived the written examination and the oral interview. Basing on the said G.O.Ms.No.214, dated 08-05-2001, the third respondent-college conducted the selection in terms of the notification. It is clearly stated by the second respondent that the selections are made only in terms of G.O.Ms.No.214, dated
08-05-2001 basing on the marks obtained in the P.G. course and not through the selection committee as contemplated under G.O.Ms.No.12, Education (CE.I) department, dated
10-01-1992.

As rightly pointed out by the learned Government Pleader for Higher Education that G.O.Ms.No.12, which is only an executive order, will not hold the field, whereas the procedure in G.O.Ms.No.214, dated 08-05-2001 is a statutory one and therefore, the selection procedure cannot be said to be arbitrary and illegal and not in accordance with the Rules in waive.

The procedure contemplated in making the selection is strictly followed and there was no deviation with regard to the selection procedure adopted by the respondents and therefore the selection procedure cannot be said to be illegal. Since the first and second selected candidates did not join the duty, the third candidate joined the duty, but however, she resigned for the post. In such a case, even assuming that the panel is in existence, the post has to be offered to the fourth candidate and thereafter if the fourth candidate is not willing, to the fifth candidate but not to the sixth candidate, who is the present writ petitioner. No Rule or Provision was brought to the notice of this Court that the respondents made this panel, which is in existence for a particular period. In the absence of any such Rule or Provision, this Court is of the opinion that even if the third candidate is resigned, the third respondent-college has to go for a fresh selection and there is no need for the third respondent-college to offer the said post to the fourth candidate in the absence of any panel. Therefore, the writ petition is totally devoid of merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed. In the circumstances, no order as to costs.

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JUSTICE K.C.BHANU

Date: 22-06-2005.

YCR

To

1 The Secretary, State of A.P., Education Department, Secretariat Buildings, Hyderabad.

2 The Commissioner and Director of Intermediate Education, A.P., Hyderabad.

3. 2 CCs to G.P. for Higher Education, High Court of A.P., Hyderabad (OUT)

4. 2 C.D. copies.